

TAXES - FOREIGN FIXED-PRICE CONTRACT

[FP-NR&D, FP-R&D, CIS, FPC, A-E – 09/04] [FAR 52.229-6 – 06/03]

- (a) To the extent that this Subcontract provides for furnishing supplies or performing services outside the United States and its outlying areas, this provision applies in lieu of any Federal, State, and local taxes provision of the Subcontract.
- (b) Definitions.
 - (1) "Subcontract date," means the date set for bid opening or, if this is a negotiated Subcontract or a modification, the effective date of this Subcontract or Modification.
 - (2) "Country concerned," means any country, other than the United States and its outlying areas, in which expenditures under this Subcontract are made.
 - (3) "Tax" and "taxes," include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.
 - (4) "All applicable taxes and duties," means all taxes and duties, in effect on the Subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this Subcontract, pursuant to written ruling or regulation in effect on the Subcontract date.
 - (5) "After-imposed tax," means any new or increased tax or duty, or tax that was exempted or excluded on the Contract date but whose exemption was later revoked or reduced during the Subcontract period, other than excepted tax, on the transactions or property covered by this Subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Subcontract date.
 - (6) "After-relieved tax," means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this Subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the Subcontract date.
 - (7) "Excepted tax," means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this Subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the U.S. Government.
- (c) Unless otherwise provided in this Subcontract, the Subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
- (d) The Subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the Subcontract price by a provision of this Subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the Subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the JPL Subcontracts Manager or to comply with the provisions of paragraph (i) below.
- (e) The Subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by the Government of the United States through JPL for such taxes. The Government of the United States through JPL shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by the Government through JPL.
- (f) The Subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the Subcontract and that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the JPL Subcontracts Manager or to comply with the provisions of paragraph (i) below.

- (g) No adjustment shall be made in the Subcontract price under this provision unless the amount of the adjustment exceeds \$250.
- (h) If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the Subcontract price or was the basis of an increase in the Subcontract price, the amount of the reduction shall be paid or credited to the Institute (JPL) or to the Government of the United States as the JPL Subcontracts Manager directs.
- (i) The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, JPL, the Subcontractor, any First-tier Subcontractor, or the transactions or property covered by this Subcontract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
- (j) The Subcontractor shall promptly notify the JPL Subcontracts Manager of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the Subcontract price and shall take appropriate action as the JPL Subcontracts Manager directs. The Subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the JPL Subcontracts Manager, including any interest, penalty, and reasonable attorneys' fees.